



DORDT COLLEGE

October 1, 2015

Catherine Lhamon, Assistant Secretary
U.S. Department of Education, Office for Civil Rights
Lyndon Baines Johnson Department of Education Building
400 Maryland Avenue, SW
Washington, DC 20202-1100

Re: Request for Religious Exemption from Certain Applications of Title IX

Dear Ms. Lhamon:

I hereby request, under 20 U.S.C. § 1681(a)(3) and 34 C.F.R. § 106.12, that the Department of Education's Office for Civil Rights acknowledge that Dordt College is exempt from Title IX of the Education Amendments of 1972 and its accompanying regulations to the extent that they are interpreted to curtail the College's freedom to respond to transgender individuals in accordance with its religious convictions. As President of Dordt College, I am the "highest ranking official of the institution," 34 C.F.R. § 106.12(b), and thus qualified to seek these exemptions.

Dordt is a non-profit institution of higher education associated with the Christian Reformed Church in North America, located in Sioux Center, Iowa.¹ The College opened its doors in 1955 with the purpose of training Christian day school teachers. Dordt College takes its name in honor of the historic Reformed synod held in Dordrecht, the Netherlands, in 1618-1619, a synod which emphasized the sovereignty of God through his electing grace—a theological distinctive that guides the College as an institution into the present day.² From this foundation in the Reformed Christian perspective, Dordt equips students, alumni, and the broader community to work effectively toward Christ-centered renewal in all aspects of contemporary life.³ As a fulfillment of its mission, Dordt provides a holistic learning experience in which classroom and other educational activities, infused with a kingdom perspective, work hand-in-hand with every other aspect of a student's experience. Dordt's curriculum is designed to help students develop Christian insight in every facet of their lives.⁴

Dordt College's mission and educational framework is shaped by the fact that the College is owned and controlled by an incorporated society composed entirely of members of the Christian Reformed Church in North America⁵ (CRCNA). It is governed by a Board of Trustees made up of 18 to 30 individuals. The board's membership includes a predominance of members elected by the society from the Christian Reformed Church. These board members represent geographical

¹ <http://www.dordt.edu/about/>.

² http://www.dordt.edu/about/our_mission/developing_history.shtml.

³ http://www.dordt.edu/about/our_mission/.

⁴ http://www.dordt.edu/about/our_mission/christian_learning_community.shtml.

⁵ <http://www.crcna.org/welcome/beliefs>.

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districts in the CRCNA. In addition, a minority of at-large board members represent various other Reformed churches. Dordt has enjoyed the committed and faithful support of a loyal constituency for more than half a century, since its inception in 1955.⁶

Dordt states its mission as follows: “As an institution of higher education committed to the Reformed Christian perspective, Dordt College equips students, alumni, and the broader community to work effectively toward Christ-centered renewal in all aspects of contemporary life.”⁷ From this mission, Dordt’s four-facet educational framework molds the College’s entire curriculum, which is designed to develop students’ Christian insight into every area of their lives—academically, spiritually, and professionally. Below are some of the student outcomes the College measures through its framework.

- **Religious orientation: Who owns your heart?**
 - Graduates will demonstrate the ability to recognize the Bible's main themes and teachings and its guiding role in a life of Christian discipleship.
 - Graduates will demonstrate a commitment to living a life of Christian discipleship and to transforming those features of our culture that oppose Christ's rule.
- **Creational structure: How do things hang together?:**
 - Graduates will demonstrate an understanding that all of reality has been structured by God, that he faithfully preserves it through his laws, and that he unifies it in Christ Jesus as its sovereign head.
 - Graduates will demonstrate the ability to use the ideas, theories, and procedures from a variety of disciplines.
- **Creational development: How did we get where we are today?**
 - Graduates will demonstrate an understanding of how our world has developed historically.
 - Graduates will demonstrate an ability to evaluate formative influences and to contribute to reformation within their particular disciplines and vocations and in common areas of life.
- **Contemporary response: What should we do now?**
 - Graduates will demonstrate the insights, skills, and strategies needed to serve in their vocations and the common tasks of adult life.
 - Graduates will demonstrate increasing wisdom, rooted in a mature fear of the Lord, in their understanding of his world and their service to his kingdom.

On August 14, 2015, the College’s Board of Trustees adopted a policy on sexual standards and conduct. It reads in pertinent part as follows:

⁶ http://www.dordt.edu/about/our_mission/supportive_constituency.shtml.

⁷ http://www.dordt.edu/about/our_mission/.

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SEXUALITY, GENDER IDENTITY, AND SEXUAL CONDUCT

7.2.4.1 INTRODUCTION

Dordt College is committed to a policy that maintains an environment where employees, faculty, staff, and students abide by biblical injunctions regarding sexual activity and refrain from sexual immorality. It is the responsibility of every Dordt College employee and student to live Christianly in harmony with the guidance of Scripture as interpreted and set forth in the reformed confessions. Scripture is clear that God created humans as two distinct sexes, male and female; however, due to sin and brokenness, our experience of sex and gender is not always what God the Creator originally designed for His glory and our joy and flourishing as his servants.

A person's desire for sexual intimacy is a creational and often very strong characteristic in human nature. Dordt College believes, based on its understanding and interpretation of the Bible that the only appropriate and permissible context in which sexual intimacy may be expressed as overt sexual interaction is in the marriage partnership of a man and a woman. Dordt College is committed to being a community where its employees and students live according to God's creational structure and abide by these Biblical injunctions for marriage and sexual activity. The college expects all students, faculty, and staff to live in accord with this understanding of sexual interaction as long as they are members of the college community.

Dordt College believes that the Bible encourages us to maintain a loving and supportive attitude towards each other and that there should be mutual respect for members of the opposite sex, as well as a loving and supportive attitude toward those who struggle with restricting their sexual interaction to marriage. The college will make efforts to work in a counseling context with individuals who find it difficult to restrict their sexual activity within the institution of marriage.

Dordt College is committed to maintaining an environment free of sexual harassment. Members of our community have the right to work, study, and communicate with each other in an atmosphere free from unsolicited and unwelcomed communication of a sexual nature. The anti-harassment policy and procedures are intended to provide fair and equitable treatment of both the complainant and the alleged harasser.

All students and employees are responsible to determine if they can abide by Dordt's sexual standards and conduct policy. If any individual doubts or questions his or her ability to do so, that person should speak to the area leader, or director of human resources, or dean of campus life to receive guidance and/or instruction.

7.2.4.2 UNACCEPTABLE CONDUCT

Dordt College specifically holds as unbiblical and therefore prohibited:

- A. Promoting or advocating sexually immoral activity. This does not prohibit members of various academic disciplines, including students and faculty, from studying, discussing, viewing films or other media about, or examining such issues as they affect individuals, society, or others.
- B. Extramarital sexual relations. Sexual activity with anyone other than with one's spouse is prohibited.
- C. Homosexual relations. It is unacceptable to have sexual relations with someone of the same sex as long as one is a member of the Dordt community, whether on or off campus. Dordt College also prohibits promoting or advocating such activity.
- D. Transgendered Behavior. Adopting an identity discordant with one's biological sex is prohibited.

For those persons in our community who struggle with restricting their sexual interaction to marriage, as well as for those in our community who struggle with gender identity, same sex behavior, same sex attraction and/or sexual orientation issues, we aspire to be a gracious community that promotes openness and honesty. We pledge to extend compassion and care, providing assistance and accountability as we support all members of our community in their desire to live consistently with the Bible's teaching on sexual purity. Dordt College will make institutional decisions in light of this policy regarding employment, hiring, retention of employees, and continued enrollment of students. Dordt College may determine that, as the result of conduct described as prohibited in 7.2.4.2, an individual shall be dismissed from the college.

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In the employment context, both applicants and existing employees are required to affirm their commitment to the College's Sexual Standards and Conduct: Statement of Policy Regarding the Christian Lifestyle at Dordt College.⁸

As you know, the Office for Civil Rights has not issued regulations or guidance explaining how an educational institution's response to a transgender individual might violate Title IX and its accompanying regulations, though the Department of Education recently issued guidance on sexual violence prevention which incorporates discrimination based on "gender identity" as part of "sex discrimination" under the statute.⁹ And as you also know, the resolution agreement¹⁰ between the Arcadia Unified School District and ED OCR (and the Department of Justice) requires the school district to permit transgender students to use the restroom, locker room, and living accommodations of their choice, and to participate in athletic programs as a member of their chosen sex.¹¹ It is thus reasonable to suppose that ED OCR believes that such responses are required by Title IX. It is also reasonable to presume that your office interprets Title IX to impose gender identity non-discrimination obligations upon covered institutions in the employment context. To the extent these suppositions are correct, it appears as though compliance with Title IX, as interpreted by ED OCR to reach transgender "discrimination," would be inconsistent with the religious tenets of DC.

Dordt College accordingly requests that your office acknowledge that the College is exempt from Title IX and the following implementing regulations (to the extent they are interpreted to reach gender identity discrimination):

- 34 C.F.R. § 106.21 (admission)
- 34 C.F.R. § 106.22 (preference in admission)
- 34 C.F.R. § 106.23 (recruitment)
- 34 C.F.R. § 106.31 (education programs or activities)
- 34 C.F.R. § 106.32 (housing)
- 34 C.F.R. § 106.33 (comparable facilities)
- 34 C.F.R. § 106.34 (access to classes and schools)
- 34 C.F.R. § 106.36 (counseling)
- 34 C.F.R. § 106.37 (financial assistance)
- 34 C.F.R. § 106.38 (employment assistance to students)
- 34 C.F.R. § 106.39 (health and insurance benefits and services)
- 34 C.F.R. § 106.40 (marital or parental status)
- 34 C.F.R. § 106.41 (athletics)

⁸ Dordt College Faculty Handbook, Dordt College Staff Handbook, p.13.

⁹ U.S. Department of Education, Questions and Answers on Title IX and Sexual Violence, *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> at 5 ("Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and OCR accepts such complaints for investigation.").

¹⁰ Resolution Agreement Between the Arcadia Unified School District, the U.S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice, Civil Rights Division, *available at*: <http://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf> -

¹¹ *Id.*

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34 C.F.R. § 106.43 (standards for measuring skill or progress in physical education classes)

34 C.F.R. § 106.51-61 (relating to employment)

Thank you in advance for your consideration. I look forward to hearing from you soon. If you require anything further, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Erik Hoekstra", with a long horizontal flourish extending to the right.

Dr. Erik Hoekstra
President
Dordt College



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

September 7, 2016

Erik Hoekstra
President
Dordt College
498 Fourth Avenue NE
Sioux Center, IA 51250

Dear President Hoekstra:

I write to respond to your October 1, 2015, letter to the U.S. Department of Education's Office for Civil Rights (OCR), in which you requested a religious exemption for Dordt College (College) of Sioux Center, Iowa, from Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance.

Title IX and its implementing regulation at 34 C.F.R. § 106.12 provide that Title IX does not apply to an educational institution controlled by a religious organization to the extent that application of Title IX would be inconsistent with the controlling organization's religious tenets. Therefore, such educational institutions are allowed to request an exemption from Title IX by identifying the provisions of Title IX that conflict with a specific tenet of the religious organization. The request must identify the religious organization that controls the educational institution and specify the tenets of that organization and the provisions of the law or regulation that conflict with those tenets.

Your request letter explains that the College is an "institution of higher education associated with the Christian Reformed Church in North America." According to your letter, "the College is owned and controlled by an incorporated society composed entirely of members of the Christian Reformed Church in North America (CRCNA)" and is "governed by a Board of Trustees" the membership of which "includes a predominance of members elected by the society from the Christian Reformed Church." Your letter explains that "the College's Board of Trustees adopted a policy on sexual standards and conduct" and that "[i]n the employment context, both applicants and existing employees are required to affirm their commitment to the College's Sexual Standards and Conduct: Statement of Policy Regarding the Christian Lifestyle at Dordt College."

Your letter requests an exemption from the provisions of Title IX "to the extent they are interpreted to reach gender identity discrimination." In support of this request, your letter cites to the College's policy on sexual standards and conduct. According to your letter, that policy

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states that “Scripture is clear that God created humans as two distinct sexes, male and female; however, due to sin and brokenness, our experience of sex and gender is not always what God the Creator originally designed for His glory and our joy and flourishing as his servants” and that, as a result, “[a]dopting an identity discordant with one’s biological sex is prohibited” at the College.

You state that, for these reasons, the College is requesting an exemption from the following regulatory provisions “to the extent they are interpreted to reach gender identity discrimination:”

- 34 C.F.R. § 106.21 (governing admissions);
- 34 C.F.R. § 106.22 (governing preference in admissions);
- 34 C.F.R. § 106.23 (governing recruitment of students);
- 34 C.F.R. § 106.31 (governing education programs or activities);
- 34 C.F.R. § 106.32 (governing housing);
- 34 C.F.R. § 106.33 (governing comparable facilities such as restrooms and locker rooms);
- 34 C.F.R. § 106.34 (governing access to classes and schools);
- 34 C.F.R. § 106.36 (governing counseling);
- 34 C.F.R. § 106.37 (governing financial assistance);
- 34 C.F.R. § 106.38 (governing employment assistance to students);
- 34 C.F.R. § 106.39 (governing health insurance benefits and services);
- 34 C.F.R. § 106.40 (governing different rules based on marital or parental status of students);
- 34 C.F.R. § 106.41 (governing athletics);
- 34 C.F.R. § 106.43 (governing standards for measuring skill or progress in physical education classes); and
- 34 C.F.R. § 106.51-61 (governing employment).

The College is exempt from these provisions to the extent that they prohibit discrimination on the basis of gender identity and compliance would conflict with the controlling organization’s religious tenets.

Please note that this letter should not be construed to grant exemption from the requirements of Title IX and the regulation other than as stated above. In the event that OCR receives a complaint against your institution, we are obligated to determine initially whether the allegations fall within the exemption here granted. Also, in the unlikely event that a complainant alleges that the practices followed by the institution are not based on the religious tenets identified in your request, OCR is obligated to identify a controlling organization to contact to verify those tenets. If the organization provides an interpretation of tenets that has a different practical impact than that described by the institution, or if the organization denies that it controls the institution, this exemption will be rescinded.

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I hope this letter responds fully to your request. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Lhamon', with a stylized flourish at the end.

Catherine E. Lhamon
Assistant Secretary for Civil Rights
U.S. Department of Education